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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,257	02/02/2004	Linda Pestano	020093-003910US	9589
20350 7590 11/14/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER WEHBE, ANNE MARIE SABRINA	
			ART UNIT 1633	PAPER NUMBER
			MAIL DATE 11/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Non-Responsive Amendment

The reply filed on 8/22/07 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): the applicant's claim amendment cancels claims 1-14 and amends claims 15-22 and adds new claim 23. Note that the amended and new claims 16-23 all depend from claim 15. Claim 15, as amended, is no longer drawn to the elected subject matter for which applicant received a first action on the merits, mailed on 2/22/07. Newly amended claim 15 is directed to an invention that is independent or distinct from the invention originally claimed and elected with traverse for the following reasons: the elected invention examined in the first office action, and specifically original claims 15-22, were drawn to a method for inducing the activation and proliferation of natural killer (NK) cells comprising contacting the NK cells with a dendritic cell that can induce the activation and proliferation of NK cells, whereas amended claim 15, and dependent claims 16-23, are now drawn to a method for inducing the activation and proliferation of natural killer (NK) cells comprising contacting a human cell population comprising NK cells and monocytic dendritic precursor cells with an effective amount of GM-CSF and IL-15 to form immature dendritic cells and further contacting the population with a dendritic cell maturation agent to produce a mature dendritic cell which can induce the activation and proliferation of the NK cells in the cell population. The claims as amended are no longer drawn to contacting NK cells with a dendritic cell capable of inducing activation and proliferation, i.e. a mature dendritic cell. The newly amended claim are drawn to contacting a mixed population of NK cells and dendritic precursor cells with GM-CSF and IL-15 and then further treating the cells with a dendritic cell maturation agent. Although mature

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dendritic cells do develop in the mixed population as a result of these method steps, the method as amended no longer includes the method step of contacting NK cells with mature dendritic cells. Further, while contact between the mature dendritic cells generated by the new method and NK cells which persist in the mixed population may occur, the specific method steps claimed are materially different than simply contacting NK cells with dendritic cells and now encompass the administration of GM-CSF and IL-15 and then a dendritic cell maturation agent to a population of NK cells and dendritic precursor cells either in vivo or in vitro, none of which reagents or methods steps were present in the examined claims.

Had the methods of amended claims 15-23 been included in the original claim set, they would have been restricted from original claims 15-22 as a patentably distinct method using the following analysis: related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have materially different designs and modes of operation, and do not share any specific method steps. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants. Restriction for examination purposes as indicated is proper because all the inventions discussed above are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

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- (a) the inventions have acquired a separate status in the art in view of their different classification;
- (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;
- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

As such, amended claims 15-23 are drawn to a patentably distinct invention from the original and elected invention of previously pending claims 15-22. Accordingly, claims 15-23 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since claims 15-23 are withdrawn, there are no claims pending that are drawn to the elected invention. As such, the amendment and response is considered non-responsive as following entry of the amendment, there are no claims under examination.

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

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Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, **the new technology center fax number is (571) 273-8300**. Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197.

Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

Dr. A.M.S. Wehbé

/Anne Marie S. Wehbé/
Primary Examiner, A.U. 1633